



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2003

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P. O. Box 1758
Victoria, Texas 77902-1758

OR2003-6647

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188003.

The City of Victoria (the "city") received two requests for "[a]ny and all documents referencing [a named individual], including printed reports and computer notes. Basically anything and everything available through the open records act." You state that all of the requested records are records of the Victoria Police Department. You state that you have released some information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to an individual solely as a victim, witness, or involved person is not private under

Reporters Committee and may not be withheld under section 552.101 on that basis. In this instance, the requestor asks the city for all records concerning a named individual. Thus, this request implicates the named individual's right to privacy. Therefore, to the extent that the city maintains records in which the named individual is portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common law right to privacy. *See id., cf. Gov't Code § 411.082(2)* (definition of criminal history record information does not include driving record information).

This office has also determined that some personal financial information is highly intimate or embarrassing for the purpose of common-law privacy. Open Records Decision Nos. 545 (1990) (common-law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). In this instance, we find that an insurance policy number contained in the submitted documents constitutes intimate information for the purpose of common-law privacy, and the public has no legitimate interest in this number. Accordingly, the city must withhold the insurance policy number we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note that the submitted documents contain information that is confidential under section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, you must withhold the Texas driver's license information, vehicle identification numbers, and license plate numbers we have marked under section 552.130.

Finally, we note that the submitted documents contain social security numbers. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution,

however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

To summarize, we conclude the following: (1) to the extent that the city maintains records in which the named individual is portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common law right to privacy, (2) the city must withhold the insurance policy number we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) the city must withhold the Texas driver's license information, vehicle identification numbers, and license plate numbers we have marked under section 552.130, and (4) social security numbers may be confidential under federal law. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 188003

Enc. Submitted documents

c: Mr. Homer Escalante
2105 Walnut Avenue
Victoria, Texas 77901
(w/o enclosures)